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CC: James J. Golden - Deputy Director for Operations
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FROM: Michael G. Dowd – Director - Air Division 

SUBJECT: APG -311 - Interim Guidance on Prevention of Significant Deterioration (PSD) and Title V Permitting for Greenhouse Gases (GHGs) Following the June 23, 2014, United States Supreme Court Ruling on *Utility Air Regulators Group (UARG) v. EPA*

DATE: August 25, 2014

Purpose

This policy is intended to provide interim guidance on how to address GHG PSD and Title V permitting in response to the June 23, 2014, United States Supreme Court Ruling which vacated in part and upheld in part EPA's Tailoring Rule for GHGs. This policy adopts the approach presented by EPA in the July 24, 2014, [EPA Memorandum - Next Steps and Preliminary Views on the Application of Clean Air Act Permitting Programs to Greenhouse Gases Following the Supreme Court's Decision in Utility Air Regulators Group v. Environmental Protection Agency](#). EPA's guidance does not address every potential issue that may arise as a result of the court decision, but does address many of the pressing issues states and sources are currently facing. At the point when EPA revises the GHG permitting requirements under their regulations (40 CFR Part 52), and after review and evaluation, VADEQ will make the appropriate changes to its rules (Chapter 85) and its State Implementation Plan (SIP).

Background

On June 23, 2014, the United States Supreme Court issued a decision on EPA's GHG Tailoring Rule. In summary, the Supreme Court said that EPA may not treat GHGs as an air pollutant for purposes of determining if a source is major for PSD and/or Title V permitting, but sources that trigger PSD for a pollutant other than GHGs should still apply Best Available Control Technology (BACT) to the GHG emissions. EPA is aware that further federal court action related to the decision will occur at some point in the future but opted to provide near term guidance on some of the immediate issues raised as a result of the court decision.

Applicability

Virginia DEQ (VADEQ) will follow EPA's lead in implementing the Supreme Court GHG Permitting Decision. This policy adopts [EPA's July 24, 2014 Guidance Memo](#). The following is a brief summary of the main points of the EPA memo. For more detailed information, please review the EPA document.

1. Permit Applications for Sources and Modifications Previously Classified as "Major" Based Solely on GHG Emissions

PSD or Title V permits will no longer be required for sources that trigger permit applicability solely based on their GHG emissions. If a source has not triggered PSD or Title V applicability based on their emissions of a non-GHG PSD or non-GHG Title V (i.e., HAPS) pollutant, they cannot trigger permitting based only on their GHG emissions. The 100,000 tpy CO₂e threshold for new sources no longer needs to be considered when making a permit applicability determination. Additionally, any source that is making a modification that is above the 75,000 tpy CO₂e threshold does not automatically trigger review. The significant emissions increase and net emissions increase of a non-GHG pollutant must be triggered before evaluating GHGs. Any permit applications currently in-house which were determined to trigger PSD or Title V only because of GHG emissions should be re-evaluated. If the permit is no longer needed, or a different type of permit would be required, the region should request the source to withdraw the current application.

2. Best Available Control Technology (BACT) Applicability to GHG Emissions

Although the court determined a source could not trigger permitting based solely on GHG emissions, it did uphold EPA's ability to require a BACT determination for GHGs. At this time, EPA has decided that GHG BACT must be applied if a new source triggers PSD for another pollutant and the potential to emit (PTE) of GHG emissions on a CO₂e basis is greater than 75,000 tpy. For modifications, the source must trigger modification based on a non-GHG pollutant and BACT should be applied to any GHG emissions that have an increase, and a net emissions increase, of 75,000 tpy of CO₂e **AND** an increase of anything over zero on a mass basis. A full top-down analysis of BACT should be made including consideration of applying Carbon Capture and Storage (CCS) where appropriate.

3. Title V

As stated earlier, a source would no longer trigger Title V applicability based solely on its GHG emissions. Any Title V application that a source submitted based only on GHG emissions should be withdrawn. The recommended course of action would be to contact the source and have them request a withdrawal of the application. Please note that if a source that is Title V for a pollutant other than GHGs and underwent a BACT determination for GHGs in an underlying PSD permit, those BACT conditions should be incorporated into the Title V permit at the appropriate time.

At this time, no definitive guidance has been given by EPA concerning any PSD or Title V permits that may have been issued based solely on GHGs. However, EPA has stated they will not enforce the GHG BACT limits that may have been established. VADEQ will follow this decision. Any further information on these issues will be disseminated as it becomes available. Please contact the Office of Air Permit Programs if you have any questions.

MGD/tmt